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Paper No. 7
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Parker Hannifin Customer Support Inc.

Serial No. 75/568,065

John A. Molnar, Jr., of Parker-Hannifin Corporation for
Parker Hannifin Customer Support Inc.

Tracy Cross, Trademark Examining Attorney, Law Office 103
(Michael A. Szoke, Managing Attorney).

Before Seeherman, Hairston and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On September 22, 1998, applicant filed an intent-to-use application for the mark MACHINESHOP (typed drawing) for goods ultimately identified as "computer software for use in managing machine control software applications in the field of manufacturing."¹ The examining attorney refused to register the mark on the grounds that the mark

¹ Serial No. 75/568,065, filed September 22, 1998, based on an intention to use the mark in commerce. The original applicant was identified as Parker Intangibles Inc. Subsequently, a Certificate of Merger was filed indicating that Parker Intangibles was merged into Parker Hannifin Customer Support Inc. See Amendment and Response dated November 3, 1999.

when applied to the goods is merely descriptive of the goods and, in the alternative, that if the mark is not merely descriptive of the goods, it is deceptively misdescriptive of the goods. 15 U.S.C. § 1052(e)(1). After the refusal was made final, this appeal followed. Applicant and the examining attorney have filed briefs. An oral hearing was not requested.

Because we conclude that the mark MACHINESHOP is merely descriptive when applied to computer software for use in managing machine control software applications in the field of manufacturing, we affirm the refusal of the examining attorney to register the mark on the ground that the mark is merely descriptive.²

A machine shop is defined as:

1. a factory, section of a factory, or workshop in which machines are made or fixed.

2. a shop in which machine tools are used to shape and cut materials, esp. metals.

See www.wordsmyth.net, Office Action dated February 14, 2000. Applicant's software manages software that controls machines in the manufacturing process. A machine shop uses machines to make or manufacture machines and parts. See

² We do not reach the misdescriptive refusal because the identification of goods and evidence of record clearly supports the holding that the mark is merely descriptive of the goods.

britannica.com, Office Action dated February 14, 2000.

Therefore, applicant's goods, as identified, would include software for use in managing machine control applications in machine shops. Applicant does not assert that its goods are not intended for use in machine shop processes or in a machine shop environment.

The evidence shows that software is used in, and designed for, machine shops.

It's called Factory Manager System and provides factories and machine shops with the software tools to help control virtually every department related to manufacturing" Modern Machine Shop, Oct. 1997, p. 170.

Software and other technology for the machine shop at the Center for Technical Education at Leominster High School will be purchased Worcester Telegram & Gazette, April 11, 1999, p. 11.

JobBoss for Windows 3.1 is a 32-bit shop management software that is optimized for use in machine shops that serve the aerospace industry. Aviation Week and Space Technology, February 23, 1998, p. 121.

With no hesitation, Hudspeth identifies area machine shops as his salestargets [sic]. "This is the biggest need right now . . . for the machine shops to acquire [sic] the software so they can have the tools to work smarter" Wichita Eagle, June 29, 1997, What's New Column.

What I was looking at was Mindbridge-developed Software that is designed specifically for small machine shops employing between 15 and 75 persons. It is called Realtrac because it is a real-time, full-featured shop floor management system for tracking activity within the shop. Iron Age, September 5, 1986, p. 41.

Additional evidence further emphasizes the common use of the term "machine shop" to describe software designed for machine shop environments. For example:

Armchair Machinist Software is described as "the EASIEST to use Machine Shop Software available."
<http://www.ixpres.com/armchair/> (updated July 23, 1998).

Another article indicates that C&R Manufacturing "offers . . . C&R custom-designed machine shop software" Mid-America Commerce & Industry, Feb. 1997, p. 20.

PC Depot's Online Tech website has a page entitled "Machine Shop Software" with the phrase "machine shop software designed for the machinist or engineer."
<http://pc-depot.com> (updated October 10, 1998).

Therefore, not only is software in general widely used in machine shops but there is evidence that certain software is specifically referred to as "machine shop software." If a machinist, engineer, or factory manager came across software with the term "machine shop" on software designed to manage machine control software applications in the field of manufacturing, the term would immediately convey to that potential purchaser a characteristic of the goods, i.e., that the software was designed to be used in a machine shop environment.

Applicant argues that its goods are a suite of computer software programs that is used in managing

software applications. The application software, in turn, provides an interface through which an operator can setup, operate, monitor, or otherwise control one or more machines used in manufacturing environments. Applicant's Amendment and Response dated October 29, 1999, p. 2. While applicant appears to be making the distinction that applicant's software manages the software that controls the machines, it is apparent that this software is suited for use in a machine shop. The term "machineshop" would accurately describe a suite of software designed to manage the software that controls the machinery used in a machine shop regardless of whether applicant's software is different from software currently used in machine shops.

A mark is merely descriptive if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods. In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 525, 205 USPQ 505, 507 (CCPA 1980); In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). To be "merely descriptive," a term need only describe a single quality or property of the goods. Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959). Of course, the descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is

sought. In re Abcor Development Corp., 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978). The absence of a space between "machine" and "shop" does not eliminate the descriptive nature of the mark. Id. The term is descriptive whether it is spelled as one word or two. Here, a prospective purchaser encountering the term "machineshop" on software would likely conclude that the software was designed to be used in a machine shop. This conclusion is fully supported by the evidence of record and the term, therefore, would immediately convey to these purchasers a characteristic of the goods, i.e., that they are designed for use in machine shops.

Applicant argues that the term "machineshop" has a non-descriptive meaning that would make its mark not merely descriptive. See In re Colonial Stores, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (Phrase SUGAR & SPICE from nursery rhyme not merely descriptive for bakery products).

Rather, the mark is in fact a play on the common meaning of the term "machine shop." That is, and as the Examining Attorney has made of record, a "machine shop" is a "factory, section of [a] factory, or workshop where machines are made or fixed," or "a shop in which machine tools are used to shape and cut materials, esp. metals." Literally, at the first level of definition, a shop where machines are used to make or fix other machines or tools. The identified goods, literally, function as a "machine shop" for application software in that an operator will use Applicant's "MACHINESHOP" program to "fix" or manage control application software.

Applicant's Brief on Appeal, pp. 4-5.

It is highly unlikely that prospective purchasers will make the imperfect and subtle analogy that applicant draws between a traditional machine shop and a suite of computer programs. This is particularly true when it is apparent that applicant's goods can be used in a machine shop environment and the term merely informs potential purchasers of that fact. In re Wells Fargo & Co., 231 USPQ 95 (TTAB 1986) (Public unlikely to make the connection between mark EXPRESSERVICE and Pony Express).

Also, applicant relies on Blisscraft of Hollywood v. United Plastics Co., 294 F.2d 694, 700, 131 USPQ 55, 60 (2d Cir. 1961) (POLY PITCHER not descriptive for plastic pitcher). However, our primary reviewing court, the Court of Appeals for the Federal Circuit, has held that an applicant did not benefit from the Blisscraft ruling when its mark was not coined or fanciful. Gyulay, 3 USPQ2d at 1010 (APPLE PIE held to be descriptive of potpourri). Here, not only is applicant's mark not coined or fanciful, it is term used in the industry to refer to software employed in machine shops.

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Decision: The refusal to register on the ground that the mark MACHINESHOP is merely descriptive of the goods is affirmed.

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